

VZCZCXRO4649
PP RUEHLN RUEHVK RUEHYG
DE RUEHKV #2265/01 3241131
ZNR UUUUU ZZH
P 191131Z NOV 08
FM AMEMBASSY KYIV
TO RUEHC/SECSTATE WASHDC PRIORITY 6743
INFO RHMFIUU/DEPT OF JUSTICE WASHINGTON DC
RUCPDOG/USDOC WASHDC
RUCNCIS/CIS COLLECTIVE
RUEHSF/AMEMBASSY SOFIA 0040

UNCLAS SECTION 01 OF 03 KYIV 002265

SENSITIVE
SIPDIS

STATE FOR EUR/UMB AND EB/TPP/IPE
STATE PLEASE PASS TO USTR FOR BURKHEAD/GROVES
USDOC FOR 4201/DOC/ITA/MAC/BISNIS
USDOC FOR 4231/ITA/OEENIS/NISD/CLUCYCK
SOFIA FOR MLAMBERTI

E.O. 12958: DECL: N/A
TAGS: [ETRD](#) [KIPR](#) [ECON](#) [UP](#)
SUBJECT: UKRAINE: IPR ENFORCEMENT COOPERATION GROUP
ADDRESSES COUNTERFEIT AGRICULTURAL CHEMICALS

REF: KYIV 821 and previous

11. (SBU) Summary: GOU, Embassy, and industry representatives discussed efforts to combat counterfeit agrochemicals at a November 14 IPR Enforcement Cooperation Group (ECG) meeting. Constructive GOU-industry dialogue on this topic continued several days later under the auspices of the European Business Association. GOU interlocutors recognized the danger presented by counterfeit agrochemicals and expressed a desire to improve enforcement. The GOU remained tight-lipped regarding a major seizure made two years ago, however, and we pressed the government to be more transparent with industry on such cases. Ukraine does not yet have an effective procedure for destroying counterfeit agrochemicals, but GOU officials at least identified the agency with overall responsibility. GOU reps also recognized the need to increase transparency in granting agrochemicals market approval. Post will consider further steps to encourage improved enforcement in this area. End Summary.

12. (U) On November 14 Ukraine's State Department of Intellectual Property (SDIP) hosted the eighth meeting of the IPR Enforcement Cooperation Group (ECG), with participation of numerous industry representatives. (Note: See reftel for previous ECG meetings. End Note.) This ECG meeting focused on combating counterfeit agricultural chemicals. The European Business Association followed up on November 18 with a roundtable of its own on the same topic.

13. (U) The following is a list of key participants in the ECG meeting:

GOU

Valentin Chebotaryov	- Deputy Chairman, SDIP
Iryna Vasylenko	- Head of Enforcement Division, SDIP
Olena Shcherbakova	- Head of European Integration and Int'l Cooperation Division, SDIP
Yuriy Shafray	- Head of IPR Division, Ministry of Internal Affairs

Industry

Svetlana Matveyeva	- DuPont
Alexey Filatov	- Vasil Kisil & Partners Law Firm (handling DuPont patent cases)
Maurice de Billot	- Monsanto
Olena Fomina	- Monsanto

Sergey Lobov - Dow AgroSciences
Valentina Nesina - BASF
Natalia MacMaithghon - Pakharenko & Partners Law Firm
(representing CropLife International)

Counterfeit Agrochemicals - A New Priority

14. (U) Chebotaryov and Deputy Econ Counselor noted that the issue of counterfeit agrochemicals was a new one for the ECG. Deputy Econ Counselor stressed that, while the problem was a complex and challenging one, the GOU could make significant progress if it worked closely and constructively with industry.

15. (U) Shafray gave a short briefing on recent cases involving counterfeit agrochemicals, noting that such cases had become more of a priority for law enforcement given the clear threat to the environment and plant, animal, and human health. Police had launched 15 criminal cases over the last two years involving distribution of illegal agrochemicals and had also detected some illegal production, albeit in relatively small amounts. Shafray noted that police could hold suspected counterfeit products for only 24 hours and said that help from industry in conducting analysis was therefore critical.

"Uzin Case" - Mum's the Word

16. (SBU) Fomina and de Billot asked for an update on the status of the large seizure of counterfeit agrochemicals

KYIV 00002265 002 OF 003

made in 2006. (Background Note: In 2006, the GOU stopped and seized a shipment of approximately 500 metric tons of counterfeit agrochemicals, with a potential sales value of \$2.5 million, from China. The shipment contained fake products of several international companies, including Monsanto, Dow, and DuPont. The seized goods were initially held at a facility in the city of Uzin, but there were soon rumors that part or all of the shipment had "disappeared," presumably sold off by corrupt government officials. The GOU was slow to provide details, although law enforcement officials told us informally that the State Security Service (SBU) had taken possession of the seized goods and was conducting an investigation. Recently, industry reps heard rumors that what was left of the shipment was moved to a different facility in the city of Shostka. End Note.)

17. (SBU) Chebotaryov and Shafray said that they were unable to discuss the details of the case, but at least confirmed that the SBU was in fact responsible. Econoff noted that an SBU official had attended almost every other ECG meeting, and lamented his absence. Econoff also emphasized that the GOU needed to open a more serious dialogue with industry on this case in order to make progress. Chebotaryov responded that SDIP would circulate a report on the ECG meeting to other agencies, including the SBU, and would encourage the SBU to be more forthright in providing information on the case.

18. (U) Marek Luczak, head of Syngenta's Kyiv office and Chairman of the European Business Association's Agrochemical Committee, delivered a similar message at the November 18 roundtable, urging the GOU to be more open in providing details on seizures.

Destruction

19. (U) Chebotaryov noted that legislation passed as part of WTO accession gave the GOU the necessary authority to destroy counterfeit goods and commented that the GOU was still working out how destruction would work in practice. (Note: The GOU has a fairly effective procedure in place to

destroy optical discs, but destruction of other goods, particularly potentially dangerous chemicals, has proved more challenging. End Note.)

¶10. (U) Shafray and Chebotaryov clarified that, once a court issued the appropriate ruling, the State Executive Service (SES), under the Ministry of Justice, took responsibility for destruction of all counterfeit goods. In the case of chemicals, said Shafray, the SES would rely on experts from the Ministry of Environment, Agriculture, and other related agencies, but the SES remained the responsible agency. (Note: Ukraine's capacity to destroy agrochemicals remains quite limited, with only two capable facilities in the entire country, and the GOU often has to send chemicals to a third country for destruction. End note.) Fomina noted that destruction of agrochemicals can be quite expensive and expressed concern that such costs could prevent progress.

¶11. (U) At the November 18 roundtable, Oleksandr Sokolov from the Ministry of Environment and Alexey Filatov, a lawyer for DuPont, said that the Law on Agrochemicals and corresponding implementing regulations needed amendment to clarify the procedures for destroying counterfeit agrochemicals. Other participants agreed but argued that the GOU already had sufficient legal authority to improve IPR enforcement in this area right away.

Patent Linkage

¶12. (U) Fomina and Matveyeva complained that patent linkage for agrochemicals remained weak and urged SDIP's patent authorities to coordinate more closely with agencies at the Ministries of Environment and Agriculture responsible for granting market access. Chebotaryov accepted the criticism but noted that the GOU had to be careful in stopping registration of suspected patent-infringing products. If such agrochemicals later proved not to be patent-infringing, he said, the producer could sue the government,

KYIV 00002265 003 OF 003

or launch an unfair competition case.

¶13. (U) Industry reps argued that the agencies responsible for granting market access could at least do a better job of publicizing registration applications, so that patent holders would have more time to address the courts. Vasylenko agreed that the GOU agencies could revise their procedures to increase transparency and said she would reach out to them.

Comment: SDIP Struggling to Coordinate

¶14. (SBU) The poor attendance from key GOU agencies at this ECG meeting was concerning. SDIP is supposed to serve as the policy coordinating body for IPR issues, and we have invested heavily, with mostly positive results, in building SDIP's capacity. Chebotaryov suggested that a follow-up meeting, if deemed necessary, be hosted by the Embassy in an effort to raise the meeting's profile and attract better GOU attendance. Indeed, following the meeting, Shcherbakova revealed frustration that so many other agencies had apparently ignored SDIP's request that they attend. End Comment.

TAYLOR